No. 15-674

In The
Supreme Court of the United States

UNITED STATES, ET AL.,
Petitioners,

v.

TEXAS, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

AMICUS CURIAE BRIEF OF FAITH-BASED ORGANIZATIONS IN SUPPORT OF THE UNITED STATES AND REVERSAL

BENJAMIN G. SHATZ
Counsel of Record
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Blvd.
Los Angeles, CA 90064
BShatz@Manatt.com
(310) 312-4000

Counsel for Amici Curiae

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BRIEF OF AMICUS CURIAE

IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amici curiae are the following U.S. faith-based organizations and persons whose work includes advocating for or providing aid and resources to recent U.S. immigrants and their families: the United States Conference of Catholic Bishops ("USCCB")[2]; Church World

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[1] This brief is filed with consent of Petitioners and Respondents. No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparation or submission of this brief, and no person other than the amici curiae or their counsel contributed money that was intended to fund preparation or submission of this brief.

[2] The USCCB is an assembly of the leadership of the Catholic Church in the United States to which all the active Cardinals, Archbishops and Bishops of the United States belong. The USCCB seeks to unify, coordinate, encourage, promote, and carry on Catholic activities in the United States; to organize and conduct religious, charitable and social welfare work at home and abroad; to aid in education; to care for immigrants and refugees; and generally to further these goals through education, publication, and advocacy. To that end, the USCCB provides and promotes a wide range of

Service ("CWS")[3]; Reverend Gradye Parsons, Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) ("PCUSA")[4]; the

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spiritual, educational, and charitable services throughout the country and around the world.

[3] As a humanitarian agency that brings together 37 Protestant, Anglican and Orthodox member communions (comprising over 45 million people in more than 100,000 local congregations), CWS works to eradicate hunger and poverty and to promote peace and justice around the world. Domestically, CWS works with 38 community-based local offices and affiliates to resettle refugees and provide legal services and assistance to immigrants in the U.S.

[4] Reverend Parsons is the Stated Clerk of the General Assembly and senior ecclesiastical officer of the PCUSA, a national Christian denomination with nearly 1,760,000 members in just under 10,000 congregations, organized into 171 presbyteries under the jurisdiction of 16 synods. Through its antecedent religious bodies, the PCUSA has existed as an organized religious denomination since 1706. This brief is consistent with policies adopted by the PCUSA's General Assembly expressing the desire that immigration law and policy of the U.S. protect family unity and allow persons already living and working in the U.S. a means of remaining free from fear of deportation. The General Assembly does not claim to speak for all Presbyterians, nor are its policies binding on

Leadership Conference of Women Religious ("LCRW")[5]; Disciples Home Missions ("DHM")[6];

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the PCUSA's membership. However, the General Assembly is the highest legislative and interpretive body for the denomination, and it is the final point of decision in all disputes.

[5] LCWR is an association of leaders of congregations of Catholic women religious in the U.S. founded in 1956. LCWR has nearly 1400 members, who represent more than 80% of the approximately 49,000 women religious in the U.S. Catholic sisters began coming to these shores 288 years ago as immigrants to serve immigrant populations and continue to this day to minister to new immigrants in schools, hospitals, and social service agencies. LCWR members have seen the devastating effects caused by the deportation of recent immigrant mothers and fathers and have provided aid and comfort to their suffering children.

[6] DHM is the enabling and coordinating expression of the Christian Church (Disciples of Christ) in the U.S. and Canada in the areas of congregational programming and mission in North America. With over 750,000 members in over 3,800 congregations, their church has since 1949 resettled more than 40,000 refugees through DHM's Refugee & Immigration Ministries, and assisted countless people facing immigration problems. Their Disciples Immigration Legal Counsel helps congregation members protect their rights, understand their

the Sisters of Mercy of the Americas[7]; Sojourners[8]; the Franciscan Action Network ("FAN")[9]; the Missionary Servants of the Most

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options and work through the U.S. Immigration system.

[7] The Sisters of Mercy of the Americas is a community of Roman Catholic women religious dedicated to service to the poor, sick and uneducated with nearly 6,500 members (vowed religious and laity) serving in 43 states. The Sisters of Mercy of the Americas interact with undocumented immigrants and their families in over 1,000 ministries, including 16 Mercy hospitals and 17 Mercy colleges and universities. The Sisters of Mercy of the Americas know undocumented immigrants as neighbors, as friends and as brothers and sisters in Christ and have experienced first-hand the benefits that the subject Immigration Guidance affords such people.

[8] Sojourners is a national Christian organization with a 40-year history committed to faith in action for social justice.

[9] FAN is a national organization of 50 member institutions with a combined membership of over 21,000 members. FAN creates a unified voice for Franciscans—a movement inspired by St. Francis of Assisi and his call for compassion for the poor. Some of FAN's members work directly with recent immigrant families and advocate on behalf of immigrant rights. This brief is consistent with Franciscan values, the

Holy Trinity[10]; NETWORK, a National Catholic Social Justice Lobby[11]; the Mennonite Central Committee U.S. ("MCC")[12]; the Conference of Major Superiors of Men

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mission of FAN, and its efforts to protect families and enable persons living and working in the U.S. to be free from fear of deportation.

[10] The Missionary Servants of the Most Holy Trinity is a congregation of Catholic priests and Brothers founded in 1929 by the American Vincentian priest, Reverend Thomas A. Judge, who work with the poor and abandoned, including recent immigrants.

[11] NETWORK, a Catholic leader in the global movement for justice and peace, educates, organizes and lobbies for economic and social transformation. Founded in 1971 by 47 Catholic sisters, NETWORK is supported by thousands of groups and individuals across the nation who are committed to working for social and economic justice at the federal level.

[12] MCC is a global, non-profit organization that strives to share God's love and compassion for all through relief, development and peace. Supporting denominations include Mennonite Church USA, Brethren in Christ Church, and the U.S. Conference of Mennonite Brethren Churches. MCC works directly with recent immigrants in the U.S. and advocates for immigrants' rights.

("CMSM")[13]; the General Synod of the United Church of Christ ("UCC")[14]; the National Latino Evangelical Coalition ("NaLEC")[15]; Hope for Peace & Justice ("H4PJ")[16]; the Good

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[13] CMSM supports and offers resources for U.S. leaders of Catholic men's religious institutes. CMSM promotes dialogue and collaboration on issues of religious life as well as peace and justice issues with major groups in church and society. There are more than 17,000 religious priests and brothers in the U.S.

[14] The General Synod of the UCC is the representative body of this Protestant denomination of approximately 1.1 million members worshipping in approximately 5,100 local churches throughout the U.S. The UCC serves God in the co-creation of a just and sustainable world. As a church of extravagant welcome and a church where "they may all be one," the UCC has a long history of advocating for justice for immigrant communities.

[15] NaLEC is an organization comprised of Latino and Latina Evangelicals committed to the common good and justice in the public sphere. NaLEC seeks to promote and amplify the voices of this growing constituency and offer solutions to some of the most intractable national challenges facing Hispanic communities, including those concerning immigration.

[16] H4PJ is a non-profit organization founded in 2004 by the Cathedral of Hope-UCC—the

Shepherd United Church of Christ[17]; ISAIAH[18]; Shadow Rock[19]; Christ's Foundry United Methodist Mission[20]; Esperanza[21]; Southside

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world's largest LGBTQ and straight-together church. H4PJ was formed to be a vocal force for those of progressive faith and ideology.

[17] The Good Shepherd United Church of Christ of Sahuarita, Arizona is located near the U.S. border with Mexico. It sees the effects on people and their families of U.S. immigration policies on a daily basis, and has long advocated for and helped immigrants, keeping in mind the example of the Good Samaritan.

[18] ISAIAH is a faith-based coalition of more than 100 member congregations that works toward racial and economic equity in the State of Minnesota. ISAIAH is actively organizing and working with local immigrant law centers and community groups to help congregants in participating ISAIAH congregations prepare to enroll for the deferred action programs that are the subject of this appeal.

[19] Shadow Rock is a progressive United Church of Christ congregation committed to social justice as exhibited in its recent offer of sanctuary for Misael Perez Cabrera to prevent his deportation to Guatemala.

[20] Christ's Foundry is a mission United Methodist Church based in Dallas, Texas.

[21] Esperanza is a Hispanic faith-based network in the U.S. with a national network of over 13,000 clergy, churches, and community-based

Presbyterian Church[22]; the Oklahoma Conference of Churches ("OCC")[23]; the National

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organizations. Driven by faith to serve and advocate for "the least of these" (Matthew 25:40), the underserved and marginalized in our society, Esperanza was founded in 1987 with support from the Hispanic Clergy of Philadelphia. Since then, Esperanza has worked to address the evolving needs of the Hispanic community both in the region and across the country. Esperanza has consistently advocated at the national level for comprehensive immigration reform, and at the local level, Esperanza's Immigration Legal Services department works directly with immigrant clients seeking to keep their families together and achieve the American dream of becoming U.S. citizens. Esperanza has seen the life-changing benefits of the DACA program first-hand, and is acutely aware of how the delayed implementation of expanded DACA and DAPA will hurt families.

[22] Southside Presbyterian Church is a church in Tucson, Arizona that provides services to a variety of people in its congregation, in its community, and in the wider Southern Arizona area. Southside has a long history of providing sanctuary to members of its immigrant community. For example, in response to the influx of Central American migrants crossing the border without resources in 1982, then-Southside Pastor John Fife declared the church a place of public sanctuary, and Southside

Hispanic Christian Leadership Conference ("NHCLC")[24]; and the Reformed Church of Highland Park ("RCHP")[25] (collectively "Amici").

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remains a place of sanctuary for persons who are undocumented in the United States, among others. Recently, the individuals who Southside has provided sanctuary to include individuals who are DAPA-eligible or who have family members who are DACA-eligible.

[23] Founded in 1972, OCC connects, motivates, and empowers the witness of Christian communities and individuals throughout Oklahoma on issues of faith and social justice.

[24] The NHCLC is the National Hispanic Evangelical Association. As the largest Latino Christian organization in America, NHCLC leads millions of Hispanic Born Again Christ followers via its more than forty thousand Evangelical congregations by providing leadership, networking, fellowship, strategic partnerships and public policy advocacy platforms to our seven directives: Life, Family, Great Commission, Stewardship, Education, Youth and Justice

[25] RCHP is a Christian church based in Highland Park, NJ that is more than 120 years old and that provides a consecrated place for worship, mission and fellowship for its extended community of more than 400, all according to the Reformed tradition.

Faith plays a significant role in the lives of most recent migrants and their families, and faith-based organizations like Amici historically have played a leading role in the U.S. in serving their needs. Amici have an interest in and derive benefits, spiritual and otherwise, from helping those less fortunate within our society, including those in immigrant communities. Amici count many thousands of U.S. immigrants (authorized and unauthorized) within their congregations and minister to them and their families. Amici help immigrants obtain legal status and otherwise advocate for and provide resources and aid to immigrant families. Through their faith-based work, Amici have unique and firsthand knowledge of the adverse impacts that family separation, immigration detention and deportation have on immigrant families in the U.S., particularly young children.

Amici's interest in this matter derives from, among other sources, both the Hebrew and Christian Bibles. Jews and Christians alike are taught that, "When a stranger resides with you in your land, you shall not do him wrong. The stranger who resides with you shall be to you as the native among you, and you shall love him as yourself; for you were aliens in the land of Egypt." Leviticus 19:33-34. While Amici may disagree deeply on many serious issues of social policy and religious belief, they

each support the vital interests of immigrants and refugees who are so seriously disserved by the preliminary injunction that is the subject of this Court's review.

In this litigation a few select states ("Plaintiffs") have challenged the Federal Government's implementation of certain immigration guidelines set forth in multiple memoranda issued by the Secretary of Homeland Security (the "Secretary"), including the Deferred Action for Parents of Americans and Lawful Permanent Residents (the "Immigration Guidance"). The effect of the Immigration Guidance is to stay deportation proceedings for four to five million individuals residing in the U.S. who pose no threat to national security or public safety and who have longstanding and close family ties to the U.S. The Guidance was issued in part to address the enormous humanitarian costs associated with unwarranted deportations and enables millions of individuals in congregations across the country to remain in the U.S. with their family members and to worship freely. Nevertheless, the Court of Appeals has upheld the district court's injunction against the Immigration Guidance based on the erroneous conclusion, among others, that the Immigration Guidance is subject to and fails to comply with the Administrative Procedure Act.

Amici concur with the United States that the Secretary has the authority and discretion to defer removing particular aliens and that the Immigration Guidance represents a valid exercise of prosecutorial discretion under *Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012) and *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 483 (1999). Amici file this brief to provide the Court with their distinct perspective on how the injunction against the Immigration Guidance represents an unwarranted judicial constraint on prosecutorial discretion and exacerbates the social ills resulting from unwarranted deportation proceedings. Amici understand that the Immigration Guidance is a temporary solution and is not a substitute for the comprehensive immigration reform our country needs.[26] But the Guidance would be a measure of mercy, providing peace of mind to nearly nine million people, including 4.5 million children.[27]

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[26] *See e.g.*, http://www.the-tidings.com/voices/archbishop-gomez/statement-on-us-supreme-court-decision-to-review-texas-v-us-9871/#.VsyQVPkrJhE.

[27] Pope Francis has stated, "[o]n this continent, too, thousands of persons are led to travel north in search of a better life for themselves and for their loved ones, in search of greater

SUMMARY OF ARGUMENT

The United States has demonstrated both that Plaintiffs lack standing to bring their claims under the Administrative Procedure Act ("APA"), 5 U. S. C. section 500 *et seq.* and that the Immigration Guidance represents a valid exercise of the Secretary's prosecutorial discretion the review of which is not justiciable. As this Court has noted, "[a]t each stage of the removal process] the Executive has discretion to abandon the endeavor, [including by] engaging in a regular practice (which had come to be known as 'deferred action') of exercising that discretion for humanitarian reasons or simply for its own convenience." *Reno*, 525 U. S.

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opportunities. Is this not what we want for our own children? We must not be taken aback by their numbers, but rather view them as persons, seeing their faces and listening to their stories, trying to respond as best we can to their situation. To respond in a way which is always humane, just and fraternal. We need to avoid a common temptation nowadays: to discard whatever proves troublesome. Let us remember the Golden Rule: 'Do unto others as you would have them do unto you.'" (Mt. 7:12) Pope Francis, United States Capitol, address to US Congress, Sept. 24, 2015. http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150924_usa-us-congress.html.

at 483-484. In light of the limited resources available, the Secretary has the discretion to balance a number of factors which are peculiarly within his expertise when determining whether to undertake deportation proceedings. *Heckler v. Chaney*, 470 U. S. 821, 831 (1985). Such discretion allows the Secretary to forbear removing particular aliens from the U.S. for a designated period time "for humanitarian reasons" and other reasons. *Reno*, 525 U. S. at 483-484. This brief addresses the substantial humanitarian reasons that support the Immigration Guidance and confirm that it represents a valid exercise of the Secretary's discretion.

REASONS FOR REVERSING THE FIFTH CIRCUIT

A. The Secretary Had Discretion to Issue the Immigration Guidance In Light of Its Benefits to the Interest of Stable Families.

Courts have repeatedly recognized that there is a public interest in maintaining stable families and communities. Even the Fifth Circuit has found that uprooting families can be an injury to the public interest. *Richland Park Homeowners Ass'n v. Pierce*, 671 F. 2d 935, 943 (CA5 1982). "The family and relationships between family members occupy a place of central importance in our nation's history and are a fundamental part of the

values which underlie our society." *Bastidas v. INS*, 609 F. 2d 101, 105 (CA3 1979) (finding insufficient consideration was given to a father's affectionate relationship with his young son in determining whether to suspend deportation proceedings).

Family unification is an integral consideration in the application of immigration law. *See* 8 U. S. C. § 1182(d)(11), (d)(12) (Attorney General has discretion to waive inadmissibility in certain circumstances to "assure family unity"); *INS v. Hector*, 479 U. S. 85, 88 (1986) (discussing the standards for suspension of deportation and noting that "Congress has specifically identified the relatives whose hardship is to be considered, and then set forth unusually detailed and unyielding provisions defining each class of included relatives"); *Akhtar v. Burzynski*, 384 F. 3d 1193, 1202 (CA9 2004) ("In response to the burdens placed on [families awaiting approval of family-based immigration visas], Congress passed an ameliorative statute designed to bring immigrant families together throughout the permanent residency petitioning process"). In the context of a deportation proceeding, the "most important single factor" that can establish extreme hardship is the possibility of "separation of the alien from family living in the United States."

Mejia-Carrillo v. INS, 656 F. 2d 520, 522 (CA9 1981).

The Department of Homeland Security's Inspector General reported that between 1998 and 2007, the government deported 108,434 alien parents of U.S. citizen children.[28] A similar number of individuals likely would have been eligible for relief under the Immigration Guidance, but for the Court of Appeal's decision affirming the preliminary injunction against the Guidance.

The deportation of parents away from their children leads to emotional and social harm, the results of which the Amici have witnessed. The Immigration Guidance would preclude or limit the harm resulting from unwarranted deportations. As a result of the Court of Appeal's decision, however, many parents are now susceptible to detention and deportation proceedings as Immigration and Customs Enforcement ("ICE") is effectively prevented from identifying individuals who qualify for deferred action or termination of their deportation proceedings. The Secretary had

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[28] Office of the Inspector Gen., Dep't of Homeland Sec., *Removals Involving Illegal Alien Parents Of United States Citizen Children*, OIG-09-15, at 4 (2009), available at www.oig.dhs.gov/assets/Mgmt/OIG_09-15_Jan09.pdf.

discretion to issue the Immigration Guidance to prevent this harm.

1. Predeportation Detention Traumatizes Families.

Even before deportation, detention of a family member often is traumatizing for an immigrant family. Detained immigrants are transported an average of 370 miles, making regular contact with their children and families virtually impossible for many.[29] Unlike jails or prisons, immigration detention centers often do not have adequate services in place to facilitate visitation by family or counsel, or even telephonic appearances for court hearings.[30]

Detainees may be transferred to various facilities during the course of their proceedings, and family members are not regularly informed

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[29] Seth Wessler, Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* 38 (Nov. 2011), available at www.atlanticphilanthropies.org/sites/default/files/ uploads/ARC_Report_Shattered_ Families_ FULL_REPORT_Nov2011Release.pdf.

[30] Nina Rabin, *Disappearing Parents: Immigration Enforcement and the Child Welfare System*, 44 Conn. L. Rev. 99, 122-124 (2011).

of their loved one's whereabouts.[31] Those who work in the immigration system acknowledge that it is common for a person to "disappear" once they have been picked up by ICE.[32] This can have severe adverse effects on their parental rights as well, particularly for "disappearing fathers." Some in the welfare system are quick to write off these fathers and cease efforts to track them down, resulting in termination of parental rights.[33] These elements of the immigration detention process are particularly harmful to the family unit. With no information and no services for the detainees or the families of detainees, the families must lean heavily on their social networks and religious communities, including Amici, to handle the repercussions of the sudden disappearance of a family member.

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[31] Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* (Dec. 2009), available at www.hrw.org/sites/default/files/reports/us1209webwcover_0.pdf.

[32] Rabin, *supra*, 44 Conn. L. Rev. at 119.

[33] *Id.*

2. Deportation Has Severely Adverse Effects on Families.

Where a parent is forcibly deported, there are serious consequences for the family left behind. A parent's deportation can lead to a permanent change in family structure and in the extreme cases, family dissolution.[34] One study found that one quarter of the families surveyed that experienced deportation were unable to keep the family together post-deportation.[35] In 2011, more than 5,100 U.S. citizen children were living in foster care after a parent's detention or deportation.[36] Even where children were able to stay with a parent, the families often experience steep declines in incomes, along with a sharp rise in housing

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[34] Post-Deportation Human Rights Project, Boston College, *The Psychosocial Impact of Detention and Deportation on U.S. Migrant Children and Families* 6 (Aug. 2013), available at www.bc.edu/content/dam/files/centers/humanrights/doc/IACHR%20Report%20on%20Pyschosocial%20Impact%20of%20Detention%20%20Deportation-FINAL%208-16-13.pdf.

[35] Joanna Dreby, *The burden of deportation on children in Mexican Immigrant Families*, 74 Journal of Marriage & Family 829, 836 (2012), available at www.immigrationeval.com/WP/wp-content/uploads/2013/10/Burden-of-Deportation.pdf.

[36] *Id.* at 835.

instability and food insufficiency.[37] In one study, families who lost their breadwinners through detention or deportation still had only recovered 8% of their previous income, nine months after the raid.[38] Nearly two-thirds of families in the study had trouble paying household bills.[39] More than one-fifth of the families reported having experienced hunger up to six months after losing a parent to detention or deportation.[40] Families with mixed immigration status often fear utilizing governmental public assistance programs, so they must rely on informal support and private charity, which may come from organizations such as the Amici organizations.[41] More than half of the households affected by deportation surveyed by the Urban Institute reported

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[37] Ajay Chaudry et al., *The Urban Inst., Facing Our Future: Children in the Aftermath of Immigration Enforcement* 39 (Feb. 2010), available at www.urban.org/uploadedpdf/412020_FacingOurFuture_final.pdf.

[38] *Id.* at 28.

[39] *Id.* at 29.

[40] *Id.* at ix, 31.

[41] *Id.* at x, 36.

receiving assistance from a local nonprofit organization or church.[42]

3. The Immigration Guidance Prevents Immediate and Long Lasting Damage to Children.

By disrupting the essential and secure base that a family provides, detention and deportation of parents puts their children at greater risk for psychological and emotional distress, including depression, anxiety, withdrawal, or aggression.[43] The more common short-term effects of parental separation through deportation include loss of appetite, excessive crying, nightmares, and other difficulty sleeping.[44] A report by the Urban Institute found that children whose parents were held in immigration detention for longer periods were more likely to exhibit adverse changes in sleeping habits and behavior, including increased anger and withdrawal.[45] Deportations involve a double or triple trauma for children, who may witness the forcible

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[42] *Id.* at 23 (summarizing work of local churches and community groups to coordinate childcare for families with detained or deported parents).

[43] *The Psychosocial Impact of Detention, supra,* at 5.

[44] *Id.*

[45] Chaudry, *supra*, at 43.

removal of a parent, suddenly lose their caregiver, and/or abruptly lose their familiar home environment.[46] Many parents who are taken into immigration custody choose not to have their children visit them due to the remote location of detention facilities, associated travel costs, and the adverse psychological impact to both parent and child resulting from witnessing the detention of a loved one. In one study, 85% of children surveyed with undocumented parents showed symptoms of post-traumatic stress disorder.

The Immigration Guidance would greatly benefit many children who are U.S. citizens or legal permanent residents by deferring the deportation of their unauthorized immigrant parents. The Migration Policy Institute (MPI) has calculated that as many as 3.7 million unauthorized immigrants who are parents of U.S. citizens or legal permanent residents could apply for temporary relief from deportation under the deferred action program. In total, MPI estimates the deferred action program and expanded DACA initiative could benefit as many as 5.2 million people – nearly half of the 11.4 million unauthorized immigrants living in the United States. The impact on children here could not be clearer.

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[46] *The Psychosocial Impact of Detention, supra,* at 5.

The damage inflicted by family instability as a result of immigration action can also have long term effects on the cognitive and physical development in children. Some young children develop speech problems after they are separated from their parents, and others suffer from delayed childhood development.[47] In another study, close to one third of undocumented parents said their children exercised less and ate and slept poorly as a result of the threat of separation caused by detention or deportation.[48]

The threat of deportation alone can keep children from school and limit their access to an education. According to the Urban Institute, approximately 275 Latino public school students—most, but not all, from immigrant families—failed to report to school in the days following an immigration raid in Nebraska.[49] Children whose families suffer from housing instability as a result of detention or

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[47] *Id.*

[48] Sara Satinsky et al., Human Impact Partners, *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families* 7, App. 45 (June 2013), www.familyunityfamilyhealth.org/uploads/images/FamilyUnityFamilyHealth.pdf.

[49] Chaudry, *supra*, at 56.

deportation of a parent often must adjust to new schools, miss days of school, and experience slipping grades.[50]

B. The Secretary Had Discretion to Issue the Immigration Guidance In Light of Its Benefits to Society and Religious Communities.

Amici have thousands of immigrants within their congregations and have seen how a lack of lawful presence can prevent individuals from positively contributing to their social, religious, and local communities. Facing the possibility of deportation, immigrants have shied away from public places, houses of worship, schools and health services, and social service staff confirm declines in client participation.[51] Immigrants spend most of their non-working hours in their homes because it is the safest way to avoid detection. Such fear inhibits immigrants and their families from patronizing local businesses and other public establishments and from regularly frequenting

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[50] *Id.* at x, 50.

[51] Jacqueline M. Hagan et al., *Social Effects of Mass Deportations by the United States Government, 2000–10*, 34 Ethnic & Racial Studies 1374, 1378 (Aug. 2011), available at www.actionresearch.illinois.edu/courses/FAA391_Spring12/ Hagan_2011.pdf.

their places of worship.[52] The Immigration Guidance would dissipate this aura of fear that prevents immigrants from fully participating in American communities.

The Amici can personally attest to the specific harm posed to those they serve by an injunction against the Guidance. A few examples are illustrative:

- Iowa City Mennonite Pastor Max Villatoro was detained and deported in March 2015 to Honduras, leaving behind his wife, four children, congregation and life of more than 20 years in Iowa. Over 16 years ago, Villatoro was convicted of driving under the influence and attempting to obtain a driver's license with a false ID. In the past 16 years, Villatoro has become a pillar of his Iowa City community, pastoring a church and helping others in his community who are struggling with drug and alcohol addiction. Villatoro's wife is allowed to remain temporarily and work under DACA, and all four of their children, ranging in age from 7 to 15 years old are all U.S. citizens. Villatoro's deportation has shattered the lives of

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[52] *Id.*

his wife and four children and devastated his church, and the community where he has been a leader for years.

- The Moreno family, members of the Disciples of Christ congregation Iglesia Alas de Salvacion, are prime examples of how the preliminary injunction has and will harm the public interest. Both parents work every day to support their family and have been in the U.S. for over 12 years. Their 18-year-old son who has lived in the U.S. since he was 6 years old was incarcerated two years ago, and while in custody was diagnosed with a severe mental illness. His older sister has received permission to work and temporary legal status to stay in the U.S., and his parents also will be eligible for deferred action under the Immigration Guidance since their youngest son at age 11 was born in the U.S. Although the Moreno's eldest son would have qualified for deferred action under the Immigration Guidance while in detention, he was instead deported several months ago to Mexico, a country he barely knows, with no support, and where treatment options for mental illness is limited

and seen as taboo. The Moreno family has been shattered as a result of their mentally unstable son's deportation.

- Arturo Garcia has lived in the United States for 15 years with his wife raising two children, one is a U.S. citizen and the other is DACA eligible. Arturo has opened a subcontracting business that employs 8 to 9 people annually and enjoys serving his community in other ways by helping with bible study and service projects at the local Catholic Church. He and his family have exhausted every resource and legal recourse to stay together over the last four years and have now turned to the faith community to find sanctuary, remaining continuously in First Unitarian Society of Denver, Colorado. In 2010 Arturo was unfairly arrested by local police and later proved innocent in court, and all charges against him were withdrawn. Although he was acquitted, Arturo was detained by immigration officials and deportation proceedings continued. ICE continues to deny Arturo's appeals saying that the suffering of his family is not reason enough to stop his deportation. Due to

> the injunction, ICE continues to deny Arturo's appeals despite the harm to his family, the families of his employees, and the long-standing ties he has with the community, as well as the fact that he would likely qualify for DAPA.

Recent immigrants contribute to local communities by providing new perspectives that enhance society's cultural fabric, as well as add to our nation's productivity. The economic gains produced by recent immigrants is well established. According to a study by the Center for the Study of Immigrant Integration at the University of Southern California, the undocumented workforce in California alone contributes $130 billion to the state's gross domestic product.[53] Deportation of the entire undocumented workforce would result in more than $650 million loss in output and eliminate

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[53] California Immigrant Policy Center and the Center for the Study of Immigrant Integration at the University of Southern California, *Looking Forward: Immigrant Contributions to the Golden State* 2 (2014), available at www.caimmigrant.org/research-and-analysis/contributions-html.

$10.6 billion in state and local taxes nationwide.[54]

Alongside their economic contributions, the positive cultural impact of recent immigrants is substantial. Recent immigrants inject creativity, a strong work ethic, and ingenuity, all of which benefit our communities. Recent immigrants also bring unique insight in food, the arts, culture, and athletics.[55] A 2014 Gallup Poll sought to quantify this effect and found that 63% of poll participants found that

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[54] The Perryman Group, *An Essential Resource: An Analysis of the Economic Impact of Undocumented Workers on Business Activity in the US with Estimated Effects by State and by Industry* 6 (2008), available at www.ilw.com/ articles/ 2008,1008-perryman.pdf; *and see* Institute on Taxation and Economic Policy, Undocumented Immigrants' State and Local Tax Contributions (2013), available at www.itep.org/pdf/undocumentedtaxes.pdf.

[55] Darrell M. West, *The Costs and Benefits of Immigration*, 126 Political Science Quarterly 427, 440 (2011) (citing Richard Herman & Robert Smith, Immigrant, Inc.: Why Immigrant Entrepreneurs Are Driving the New Economy and How They Will Save the American Worker (2010)).

immigrants were good for this country.[56] The poll also found that 88% of participants favored allowing undocumented immigrants already in the country to become U.S. citizens if they paid taxes and a penalty, passed a criminal background check, and learned English. Only 12% opposed this proposal.[57] Ultimately, recent immigrants, with their varied backgrounds, personal stories, and tastes enrich our communities. As Pope Francis recently stated in his address to a joint session of Congress "We must resolve now to live as nobly and as justly as possible, as we educate new generations not to turn their back on our neighbors and everything around us. Building a nation calls us to recognize that we must constantly relate to others, rejecting a mindset of hostility in order to adopt one of reciprocal subsidiarity, in a constant effort to do our best. I am confident that we can do this."[58] Unwarranted deportations deprive our

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[56] Gallup, Immigration, www.gallup.com/poll/1660/immigration.aspx (2014 June 5-8 responses).

[57] *Id.* (2013 June 13-July 5 responses).

[58] Pope Francis, United States Capitol, address to US Congress, Sept. 24, 2015. http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150924_usa-us-congress.html.

communities and nation of diversity of thought and enrichment of culture.

CONCLUSION

The Immigration Guidance provides important benefits to those most vulnerable in our society and to those who serve them. By reducing unwarranted deportations, the Immigration Guidance also ensures that the public will continue to benefit from the substantial contributions of recent immigrants. Because the Immigration Guidance provides substantial humanitarian benefits, it represents a valid exercise of the Secretary's prosecutorial discretion the review of which is not justiciable. Accordingly, the Fifth Circuit erred and its decision should be reversed and the injunction against the Guidance should be vacated.

Respectfully submitted,

BENJAMIN G. SHATZ
Counsel of Record
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Blvd.
Los Angeles, CA 90064
BShatz@manatt.com
(310) 312-4000

Counsel for Amici Curiae